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SUBJECT: NEW ELECTION LAW UNLIKELY, BUT ELECTIONS STILL ON

REF: KABUL 1193

¶1. (SBU) SUMMARY. After lingering on the National Assembly's Lower House agenda for weeks, a proposed election bill is unlikely to come to a vote in time to impact next year's presidential elections. Nonetheless, future candidates and election experts agree that the political consensus and legal framework to conduct presidential and provincial council elections next year are in place. The Independent Electoral Commission (IEC) remains committed to the current timeline, with voter registration beginning October 6 and voting day planned for August 2009.

Draft Law Going Nowhere for Now

¶2. (SBU) The proposed election bill has been caught in the middle of a dispute over National Assembly seats reserved for Kuchi nomads elected country-wide (reftel). Ethnic Pashtun MPs support the status quo while many non-Pashtuns advocate returning the 10 seats in question to electoral districts (currently each province serves as a multi-seat district depending on population) or distributing half the seats to non-Pashtun nomads. The Lower House created a 20-member bipartisan commission to find a compromise last spring, but it has been unsuccessful. The commission did not meet during the June-July legislative recess and many of its members on both sides are among the most hard-line opinion holders on the issue and have stated publicly that they will not support a compromise solution.

¶3. (SBU) Saleh Mohammad Regestani (Panjshir, Tajik), chairman of the Legislation Committee and a member of the bipartisan commission, said he does not expect the proposed election law bill to reach the house floor, even though parliament staff continue to place it on the agenda. He said disagreements between the two sides remain unresolved and some MPs have threatened to break quorum if a version of the bill they disagree with reaches a vote. Regestani himself has a reputation for antagonizing his opponents and suggesting "compromises" he knows the other side will not accept, thereby drawing out disputes such as this with Pashtun nationalists. His committee has tried to punt the dispute to the IEC, which has declined to opine on political matters.

¶4. (SBU) Parliament's inaction effectively runs out the clock on making changes to election law. According to the Afghan Constitution's Article 109, the National Assembly cannot amend election law during the last year of its legislative agenda. Most interpret this to mean the year preceding the presidential election, currently set for August 2009. MP Kabir Ranjbar (Kabul, Pashtun), Government Affairs Committee chairman, said he thought a new election law could slip in a few weeks past the constitutional one-year deadline, as most officials were already overlooking the Constitution's mandate for a presidential election no later May 2009, but that the Kuchi seats issue was so divisive, no solution would be possible for several months.

Other Options on the Table, but Status Quo Likely

¶5. (SBU) Haji Ibrahim, brother and chief of staff to Lower House Speaker Yunus Qanooni, said the Lower House would keep the elections law on its agenda in the hopes that a compromise will emerge. However, he and others believe more likely outcomes in the coming months are (in descending order of probability):

- Nothing will happen. If parliament does not pass a new election law, the previous law will stand and the election will operate under those rules.

- President Karzai will issue a decree authorizing changes in the election law while MPs are in recess in December. Although these changes would effectively change

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the law within 12 months of an election, most accept the Constitution only forbids the National Assembly from changing the election law within the one year, not the president.

- Parliament will draft a scaled-down version of the election law and pass it within the next few months, putting off issues related to the Kuchi seats and the 2010 National Assembly elections until next year. The practical result of this action would be ratifying the present law, as absent changes for the 2010 parliamentary elections, the current bill proposes no major changes for carrying out the presidential elections.

¶6. (SBU) Leaders of the opposition United Front coalition support a comprehensive election law, but also recognize it is most likely unattainable in the near-term. Neither the United Front nor any other major faction in parliament has called for delaying next year's election. Instead, the United Front is setting its sights on more minor changes to the country's elections system in an effort to reduce what they see as President Karzai's influence over the process. One member of the United Front's executive committee close to former president and Jamiat party leader Burhanuddin Rabbani (Badakhshan, Tajik) said the United Front would demand the resignation of the IEC chairman and seek parliamentary input into his replacement. Political and legal experts differ on whether the legislature has the authority to do so, but the United Front's objective is more to register its concern that Karzai, as incumbent and candidate, should remain outside decisions on the electoral process that could introduce bias.

Elections Will Go On

¶7. (SBU) A new election law promised two possible benefits: solidifying a political consensus behind elections, and demonstrating that Afghan democratic institutions, particularly the legislature, are moving beyond the transitional phase. The legal provisions of the 2005 law and the present bill are largely similar, and the many small suggested changes relate to constituencies and representation (like the vexing Kuchi issue), the role of parties, and

anti-fraud measures. Caught between ethnic rivalries and political positioning, the new law is unlikely to come up for a vote any time soon. The easiest course of action for all sides will be to let the issue pass; Karzai's predilection for avoiding difficult decisions in favor of interim solutions and parliament's inability to bring controversial issues to a final vote mean elections under the current law will be the likely outcome. Because opposition and incumbent presidential contenders are publicly declaring their candidacies, and the IEC and the legislature accept the proposed electoral calendar, the sought-for political consensus seems certain. As for consolidating democratic institutions, the elections themselves are the most important signal of progress.

WOOD